

MJG/SH/23/MD

Commissioner's File: CSB/176/1987

C A O File: AO 2058/SB/1987

Region: North Western

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Names:

Social Security Appeal Tribunal:

Case No:

**IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT**

[ORAL HEARING]

1 I allow the claimant's appeal against the decision of the social security appeal tribunal dated 4 December 1986 as that decision is erroneous in law and I set it aside. I give the decision which the tribunal should have given, namely that the claimant is not entitled to supplementary benefit for 1 September 1986 and for such time thereafter as he was attending a course for the Law Society's Final Examination at the College of Law (which course ended on 8 July 1987) because I hold that that course was a "course of full-time education" within the meaning of regulation 2(1) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981: Social Security Act 1975, section 101(5) as substituted by paragraph 7 of Schedule 5 to the Social Security Act 1986.

2. This is an appeal to the Commissioner by the claimant, a single man, aged at the material time 22 years, against the unanimous decision of the social security appeal tribunal dated 4 December 1986. That decision was in fact similar to my decision in paragraph 1 above and I have set the tribunal's decision aside only because I accept the written submission dated 10 February 1987 (paragraphs 10 and 11) of the adjudication officer now concerned that the tribunal's decision was erroneous in law in that it lacked the findings of fact necessary to a proper determination of whether or not the claimant was a "student" within the detailed definition to be found in regulation 2(1) of the above cited Conditions of Entitlement Regulations. Moreover, the tribunal made a mistake when they held that "the regular mock examinations which must be sat throughout the year take up further time for attendance at the College" whereas it is clear that in fact the mock examinations were included in the claimant's overall hours of attendance (see below).

3. On my direction the appeal was the subject of an oral hearing before me on 21 October 1987 at which the claimant was present and addressed me and the adjudication officer was represented by Mr. J. Latter. I am indebted to the claimant and to Mr. Latter for their assistance to me at the hearing. In my direction for the oral hearing dated 25 August 1987 I stated,

"At that hearing I wish to have, if possible, the factual materials necessary for me to give the decision the social security appeal tribunal should have given, if I should conclude that that tribunal erred in law."

4. I have consequently had before me voluminous documentary evidence on the questions involved and I have also heard the oral evidence of the claimant. I conclude that this is a proper case for me to exercise the new power given by the substituted section 101(5) of the Social Security Act 1975 for the Commissioner to make findings of fact and thereby to give the decision which the tribunal should have given, which I have done in paragraph 1 above.

5. The facts are briefly these. On 3 September 1986 the claimant claimed supplementary benefit indicating that he had ceased temporary work on 1 August 1986. He stated in response to departmental enquiries that he had started on a course of instruction for the Law Society's Final Examination for Solicitors at the College of Law near Chester. A letter dated 10 September 1987 from the Establishment and Administration Officer of the College of Law states,

"I confirm that the above-named was a student at the College of Law, ...Chester, on a course leading to the Law Society's Solicitors' Final Examination. The course commenced on 1 September 1986 and ended, after the examinations, on 8 July 1987. [The claimant] was in full-time attendance throughout the course, with the exception of vacational breaks from 20 December 1986 to 11 January 1987 inclusive and from 11 April-26 April [1987] inclusive." [I leave to the local adjudication officer the question whether the claimant was entitled to supplementary benefit during those vacations - see the definition of "student" in regulation 2(1) of the Conditions of Entitlement Regulations - paragraph 8 below].

6. Those facts are not disputed, as I understand it, by the claimant but he has added that his total hours of attendance at the College of Law for this course were 11 hours per week attending either lectures or tutorial groups or mock examinations (all of which he was required by the College to attend). He has pointed out that these commitments were in practice fulfilled by him during the mornings and that the afternoons were free for him, so far as any compulsory attendance at lectures, tutorials etc was concerned. Indeed he states that the limited accommodation at the College building was such that he would not be able to remain in the College in the afternoon. He explained that the course for the Law Society's Final Examination was of a practical nature and that all the materials necessary for study were provided by the College of Law. There were no requirements for further research by students nor were there library facilities available for such research to be conducted.

7. The claimant therefore strongly contend, with ably formulated written and oral submissions, that he was not while at the College of Law a "student" within regulation 8(1)(a) of the above-cited Conditions of Entitlement Regulations, which provides as follows,

"Circumstances in which persons are not to be treated as available for employment

8. (1) A claimant shall not be treated as available for employment if he is a person to whom one or more of the following sub-paragraphs apply:-

(a) he is a student and regulation 6(a), (i) or (j) does not apply to him [those sub-regulations do not apply to the claimant]"

8. The word "student" in regulation 8(1)(a) is defined in regulation 2(1) of the Conditions of Entitlement Regulations as follows,

"'Student' means a person aged 19 or over but under pensionable age who is not a

person to whom regulation 3(5) of the Supplementary Benefit (Aggregation) Regulations 1981 applies [the claimant is not such a person - regulation 3(5) relates to persons aged between 19 and 20 at the relevant time and the claimant was aged 22] and who is attending a course of full-time education... but he shall not be deemed to be a student during periods when he is not attending his course and is not engaged in a programme of studies." (my underlining).

9. Whether or not a claimant can be regarded as a "student" in the present type of case, ie whether the claimant "is attending a course of full-time education" (regulation 2(1)) is a question of fact. The definition of "a part-time course" to be found in regulation 7(4) of the Conditions of Entitlement Regulations which refers to the hours spent receiving instruction, tuition etc., not exceeding 21 hours a week, is not relevant since regulation 7 (circumstances in which persons are to be treated as available for employment) is expressly by regulation 7(1) made "subject to regulation 8" (see also on this point reported Commissioners' decisions R(SB)40/83 and R(SB)41/83).

10. In those decisions the learned Commissioners dealt in detail with the criteria for answering the factual question of whether or not a course is a "full-time course" within the meaning of regulation 2(1) of the Conditions of Entitlement Regulations. The headnotes to those decisions accurately summarise the effect of the decisions. The relevant paragraphs from the headnotes are as follows,

Decision R(SB)40/83

"It is irrelevant to take account of a claimant's reasons for attending a course or of his readiness to abandon it in order to accept an offer of employment. Such matters do not effect the nature of the course and in particular whether it is full-time (paragraph 15)"

"Whether a course is a 'a course of full-time education' is a question of fact for determination by the supplementary benefit officer or tribunal. Evidence from the educational establishment as to the nature of the course is not necessarily conclusive. However, such evidence ought to be accepted as conclusive unless it is challenged by relevant evidence which at least raises the possibility that it should be rejected (paragraph 18)."

Decision R(SB)41/83

"It is not material whether a claimant considers himself to be a full-time student or a part-time student. He is caught by regulation 8(1)(a) of the Conditions of Entitlement Regulations if he is a 'student' within the terms of regulation 2(1) of those Regulations (paragraph 11)"

"The express purpose of the Regulations is not to be circumvented by reliance upon the required hours of attendance or those which the student says that he in practice devotes to the course or by what he says are his intentions in regard to the course and his availability for other forms of employment (paragraph 11)"

"Whether a person is a student attending a course of full-time education is a question of fact for determination having regard to the circumstances in each particular case. In so doing, account ought to be taken of the description of the course given by the education authority. Such evidence is not conclusive but evidence adduced in rebuttal should be weighty in content (paragraph 12)."

"The normal period prescribed for completion of a course is an indication as to whether the student is attending a course of full-time education."

11. In my judgment those criteria, which I follow as being a correct statement of the law, conclusively determine the present appeal against the claimant. He has explained that he was attending the course not necessarily in order to qualify as a Solicitor (because that would involve articles of clerkship after the completion of the course) but that the qualification might well stand him in good stead in other fields of activity and that in any event he would rather pursue the course than simply be unemployed. He has emphasised the practical nature of the course and the fact that University type research is not possible on it. On the other hand, the College of Law when asked about this matter have stated in writing on more than one occasion that the course is a "full-time" course. In the latest of the letters (compare earlier letter of 21 September 1987) the Establishment and Administration Officer of the College, in a letter to the claimant dated 13 October 1987, states as follows,

"Thank you for your letter of 10 October in connection with your attendance on the Solicitors' Final Course and your appeal to the Social Security Commissioners. Whilst I am able to confirm that the work lists which you enclosed were those applicable to your class, and that you are not required to attend any other lectures or tutorials during that period, or indeed able to do so, I feel obliged to state that this does not mean that you are not expected to spend further time on course work. In the introductory lecture and notes to students, it is made clear that the course is a full-time one, and the College has gone to some lengths to establish this fact with the Department of Education and the local authorities, in order that students may be eligible for grants. The converse of that is that D.H.S.S. and the College considers students ineligible for a benefit whilst they are on the course, and this has been a matter of record with the local D.H.S.S. offices for some time. In your own case, the Social Security Commissioners have already sought confirmation of the dates during which you were enrolled on the course and of the fact that the course was a full-time one. As far as dates are concerned, the course commenced on 1 September 1986 and ended on 8 July 1987, with vacational breaks at Christmas and Easter. I hope that this information is of some help to you, but I am sure you will appreciate that the College cannot contend, on the one hand, that the course is a full-time one and, on the other that it is part-time. There is, of course, some ambiguity between full-time attendance, and the hours that a full-time student is actually required to attend, but that is true of virtually all higher and further education."

12. The fact that the College of Law may have been anxious to establish the course as a full-time course for the purpose of student grants from local authorities and its relationship with the Department of Education is in my view in no way conclusive of or really relevant to the question whether for supplementary benefit purposes the course was a "full-time course" within regulation 2(1) of the Conditions of Entitlement Regulations. I have throughout not lost sight of the fact that regulation 2(1) refers to the necessity, if a person is to be disentitled as a "student" that he should be "attending" a course of full-time education.

13. Nevertheless, I consider that the reality of the matter is that the course was a course of full-time education. In paragraph 11 of R(SB)41/83 the learned Commissioner stated,

"... it is a well known fact that the required hours of attendance for lectures and tutorial purposes in a full-time course of Higher Education are limited and that the student is expected to devote the greater part of his time to research projects and private study. Once a student has been accepted for enrolment upon a course and has paid the fees (which in this instance was substantial) he is expected to devote such time to his studies as the University or College of Higher Education considers necessary for successful completion of the course. How he in fact spends his time and whether or not he intends to complete the course and what use he proposes to make of the knowledge or qualification upon completion of the course is a matter for him. He is no less attending a course of full-time education whether or not he devotes to it the number of hours considered necessary for successful completion of the course."

14. I appreciate that those remarks by the learned Commissioner were made in the context of a claimant who had enrolled upon a course for a Post-Graduate Diploma in Marketing and I appreciate that the academic nature and research requirements of such a course would be different from those for the Solicitors Final Examination course. Nevertheless I am quite satisfied that the nature of the Solicitors Final Examination and the high standard required of those who seek to pass it would mean that the course would require much more of a student than bare attendance at compulsory lectures, tutorials, mock examinations etc, if he were to be successful in the examination. Students on such courses devote the whole of their time to necessary study, ie study of the course material supplied to them by the College of Law for the understanding of legal and practical matters which may well be unfamiliar to them, even if they have a law degree. Time is also needed for the necessary learning of the material, the nature of the examinations being inevitably such that some rote-learning is necessary.

15. Consequently, on my own independent judgment of the facts of this case, I come to the same conclusion as another Commissioner in a decision on Commissioner's file CSB/267/1985, when he concluded that a student on a Solicitors' Final Examination Course at the College of Law at Guildford was a "student" within the meaning of regulation 2(1) of the Conditions of Entitlement Regulations and therefore could not claim supplementary benefit. But I emphasise that my decision is made independently of that decision and I do not rely on it in arriving at my conclusions in this decision.

16. I ought also to say, since the claimant stressed this matter in his submissions to the Commissioner, that I do not consider that reported decisions R(SB)40/83 and R(SB)41/83 are inconsistent with the decision of a Tribunal of Commissioners in R(SB)26/82. I agree with paragraph 17 of R(SB)40/83 in which the learned Commissioner distinguished R(SB)26/82, which latter case concerned an entirely different type of case namely that of a claimant under 19 who had returned to school in order to study for 'O' Level examinations. In such a case other provisions of the Conditions of Entitlement Regulations may be relevant and in particular regulation 7(4), which is not relevant here for the reason given in paragraph 9 above. I appreciate that in R(SB) 26/82, the Tribunal of Commissioners were construing the phrase "attending for not more than 21 hours a week a course of education" in the then regulation 7(3) of the Conditions of Entitlement Regulations and that, taken out of context, the general statements by the Tribunal would assist the claimant's contentions. But the context of R(SB) 26/82 is significantly different and those statements consequently cannot be prayed in aid by the claimant.

17. Lastly, I should say that I note that the claimant's name appeared in the Pass List for the Law Society's Final Examination published on 30 October 1987, though not, I think, for the entire examination. He is to be congratulated on having 'defeated' the examiners, at least in part.

(Signed) M.J. Goodman
Commissioner

Date: 24 November 1987